IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.207 OF 2006
WITH
CRIMINAL APPEAL NO.195 OF 2006

Amjad Wajir Pathan ...Applicant.
Versus
The State of Maharashtra ...Respondent.

. . .

Mrs.Jyoti Pawar with Mr.A.T.Gade, Advocate for the applicant.
Smt.V.R.Bhosale, APP, for the State.

. . .

CORAM : D.G.DESHPANDE AND
SMT.V.K.TAHILRAMANI, JJ.
DATED : APRIL 20, 2006.

P.C.:

. Heard Mrs.Pawar learned Advocate for the applicant-original accused No.2 and Smt.Bhosale learned APP for the State.

2. The applicant has been convicted under Section 393 and 302 read with 34 of IPC. The applicant is now seeking bail.

3. It is the prosecution case that the deceased Kripashankar Mishra was proceeding to Dombivali alongwith P.W.6 Raju Koli on motorcycle. At that time, two persons came from the front side

of their motor-cycle and they gave call as "Ye". At that time the deceased said to them, "Kya Hai Re". P.W.6 Raju was having cash of Rs.7000/- at that time. One of the persons started snatching the bag having cash of Rs.7000/-. At that time, the applicant had fired a country-made revolver at Kripashankar causing a bullet injury below chest. On Kripashankar being taken to the hospital, he was declared dead.

4. The learned Advocate for the applicant has submitted that there is no recovery at the instance of the applicant and the only material against the applicant is that P.W.6 Raju Koli has identified the applicant as the person who fired at deceased Kripashankar i.e. P.W.6 Raju has stated that the applicant was the person who fired at Kripashankar. The learned Advocate for the applicant has submitted that P.W.6 has directly identified the applicant in the Court and there is no material to show that P.W.6 had earlier identified the applicant in an identification parade. The learned Advocate for the applicant has further submitted that such identification by

P.W.6 in the Court, cannot be relied upon.

5. The learned APP on the other hand had submitted that infact P.W.6 had identified the applicant in test identification parade. In support of this contention, she has placed reliance on the evidence of the Special Executive Magistrate, who has held the parade who has stated that P.W.6 has identified the accused in the parade. She has also placed reliance on the evidence of P.W.8 P.I. Jagannath Londhe, who is the investigating officer. The learned APP has pointed out the evidence of P.W.8 P.I. Londhe, wherein he has stated that on 27.5.2004 the identification parade of the accused has been held at Adharwadi jail, Kalyan and in the said identification parade the complainant (P.W.6) has identified the accused. Thus, the learned APP has pointed out that indeed identification parade was held and P.W.6 has identified the present applicant in the parade.

6. In respect of identification the learned Advocate for the applicant has placed reliance on

the decision of the Supreme Court in the case of **Surendra Singh Rautela @ Surendra Singh Bengali Vs. State of Bihar** reported in **AIR 2002 Supreme Court 260**. She has placed reliance on observations in Para 10 of the said judgment, which are as under :

> "10. Turning now to the case of appellant Mohd.Anis, it may be stated that his conviction is based upon the solitary evidence of his identification by Ranjan Singh (PW 7) in Court as well as in the test identification parade. Even according to prosecution case as disclosed in the first information report as well as the evidence of RAnjan Singh (PW 7), this appellant was sitting on rear seat of the scooter which came from left side of the car and fired at the victims. In the first information report, it has been specifically stated that the associates of the informant who were in the Car could identify this appellant, who fired from the scooter, on seeing him and the informant could identify the person who was driving the motor cycle on seeing him and on which motor cycle accused Surendra Singh Rautela was sitting on the rear seat and fired at the victims. From the aforesaid statement of the informant in the first information report, it would appear that he could not identify appellant Mohd. Anis even by face and for the first time in the Sessions Court, the witness identified him. In view of the aforesaid statement in the first information report, the identification of the appellant Mohd. Anis by Ranjan singh (PW 7) in the test identification parade becomes farce and no reliance can be placed upon his identification in Court. This being the position, we have no option but

> to hold that the High Court was not justified in upholding convictions and sentences awarded against this appellant." (Emphasis supplied)

. We have carefully considered the said decision. As far as the present case is concerned, there is no such statement made by the first informant i.e. P.W.6 in his First Information Report. Thus, the decision in the above case would not be applicable to the facts of the present case.

7. The Supreme Court in the case of **Ronny alias Ronald James Alwaris Vs. State of Maharashtra**, reported in **AIR 1998 Supreme Court 1251** has observed that the evidence of identification in the TIP is not a substantive evidence, and the substantive evidence is the statement of the witness made in the Court. In the case of Ronny Vs. State of Maharashtra, the Supreme Court has further observed that, "where the witness had opportunity to interact with the accused for some period of time i.e. few minutes, in such circumstance holding of test

identification parade was not necessary."

8. From the facts of this case, it is clear that the applicant had tried to rob deceased Kripashankar and his companion and in the course of the said incident, the applicant has fired at Kripashankar which resulted in his death. There is sufficient material to connect the applicant with the crime. Hence, the application is rejected.

9. Hearing of Appeal is expedited.

(D.G.DESHPANDE, J.)

(SMT.V.K.TAHILRAMANI,J.)